

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ALTERWAN, INC.,

Plaintiff,

v.

AMAZON.COM, INC. and
AMAZON WEB SERVICES, INC.,

Defendants.

Civil Action No. 19-cv-1544-MN

STIPULATION AND ORDER OF NON-INFRINGEMENT OF THE PATENTS-IN-SUIT

WHEREAS, Plaintiff AlterWAN, Inc. (“AlterWAN”) alleged that Defendants Amazon.com, Inc. and Amazon Web Services, Inc. (“Amazon”) infringe one or more claims of U.S. Patent Nos. 7,111,163 (“’163 patent”); 7,318,152 (“’152 patent”); 8,595,478 (“’478 patent”); 9,015,471 (“’471 patent”); 9,525,620 (“’620 patent”) and 9,667,534 (“’534 patent”) (collectively, “Patents-in-Suit”) (D.I. 1);

WHEREAS, Amazon answered, denied that it infringed the claims of the Patents-in-Suit, and asserted various affirmative defenses, including a defense of invalidity (D.I. 55);

WHEREAS, the Court held a claim construction hearing on February 5, 2021;

WHEREAS, on March 15, 2021, the Court issued an Order, construing the terms “cooperating service provider” and “cooperating third party service provider” of the ’478 and ’471 patents as a “service provider that agrees to provide blocked bandwidth” and the term “non-blocking bandwidth” of the ’152 and ’471 patents as “bandwidth that will always be available and will always be sufficient,” among other constructions (the “Claim Construction Order”) (D.I. 133);

WHEREAS, AlterWAN confirmed that, in view of the Court's Claim Construction Order and to preserve judicial and party resources, it would no longer pursue claims for infringement of the '163, '471, '534, '152, or '620 patents, leaving only claims on the '478 patent remaining in the case;

WHEREAS, on June 22, 2021, AlterWAN served its expert report on infringement, asserting infringement of only claims 1, 3, 4, 5, 6, 14, 15, 16, 18, 19, 25, 26, 28, 40, 51, 52, 55, 56, 57, 59, 63, 64, and 67 of the '478 patent, and later withdrew claims 3, 5, 15, 16, 26, 40, 57 and 59;

WHEREAS, on November 23, 2021, the Court held a hearing on the parties' respective motions for summary judgment;

WHEREAS, the claims remaining as of the summary judgment hearing were claims 1, 4, 6, 14, 18, 19, 25, 28, 51, 52, 55, 56, 63, 64, and 67 of the '478 patent;

WHEREAS, on the record at the summary judgment hearing, the Court, upon AlterWAN's motion for summary judgment for construction of three claim terms (D.I. 213), revised its construction of the term "cooperating service provider," construing the term as a "service provider that agrees to provide non-blocking bandwidth," with "non-blocking bandwidth" previously construed as "bandwidth that will always be available and will always be sufficient," construed additional terms, and denied the parties' other summary judgment motions (the "Summary Judgment Order");

NOW, THEREFORE, to preserve judicial and party resources and permit appellate review of the Court's Orders, the parties stipulate and agree as follows:

1. Under the Court's constructions of "cooperating service provider" and "non-blocking bandwidth," Amazon has not infringed, and does not infringe, the '478 and '471 patents.

2. The parties stipulate to the entry of judgment of non-infringement of the '478 and '471 patents, subject to AlterWAN's forthcoming appeal of the Court's Claim Construction and Summary Judgment Orders. Nothing in this Stipulation and Order limits or restricts AlterWAN's or Amazon's rights to appeal, rights on appeal, or rights against the opposing party if this case is reversed and/or remanded on appeal. The parties expressly reserve the right to appeal the Court's constructions of claim terms in its Claim Construction Order and in its Summary Judgment Order as well as the Court's other Orders, including (for example) the Court's statements and rulings during the hearings.

3. AlterWAN's claims for infringement of the '163, '152, '534, and '620 patents are voluntarily dismissed with prejudice. By agreeing to dismissal with prejudice of these patents, AlterWAN does not concede that any terms of these patents were properly construed, and AlterWAN expressly reserves the right to seek different constructions and challenge any of the Court's constructions in this case in any future proceeding.

4. A proposed final judgment reflecting this stipulation is submitted herewith.

Dated: December 21, 2021

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Respectfully submitted,

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IT IS SO ORDERED THIS ____ day of _____, 202__.

The Honorable Maryellen Noreika